

EXECUTIVE SECRETARIAT

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Remarks:

Direct reply please with
info this office.

JRC
Executive Secretary
10 May 1983
Date



OFFICE OF THE SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

May 10, 1983

83-2503

MEMORANDUM FOR: OVP
STATE
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- MR. PHILIP HUGHES
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- MR. LES DENEND
- MR. JOHN POINDEXTER
- MR. RAYMOND LETT
-
- MRS. HELEN ROBBINS
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- MR. WILLIAM A. NISKANEN
- MR. ALTON G. KEEL
- MS. RUTH MORGENSTERN

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SUBJECT: Interagency Group on International Economic Policy (IG-IEP)

Assistant Secretary Leland requests that you provide comments on the attached draft Administration International Investment Policy Statement and background paper by Wednesday, May 18. Following receipt of IG agency comments the Statement and background paper will be redrafted and reviewed by the SIG-IEP. The intention is to eventually release the Statement as an Administration policy position.

Please direct your comments to Frank G. Vukmanic of my staff. Frank can be reached on 566-2386.


David E. Pickford
Executive Secretary

Attachments



Draft International Investment
Policy Statement

Executive Summary

International direct investment plays a vital and expanding role in the world economy. To ensure its maximum contribution to both global and domestic economic well-being, the United States believes that international direct investment flows should be determined basically by private market forces and should receive non-discriminatory treatment consistent with the national treatment principle.

The United States welcomes foreign direct investment that flows according to market forces. The United States accords foreign investors the same fair, equitable, and non-discriminatory treatment it believes all governments should accord foreign direct investment under international law.

The United States opposes continued and increasing government intervention that impedes or distorts investment flows or attempts to shift artificially the benefits of these flows. These measures include trade-related or other performance requirements, fiscal or financial incentives and discriminatory treatment of foreign investment.

To counter such measures, the United States will pursue an active international investment policy aimed at reducing foreign government actions that impede or distort investment flows; and at developing an international system, based on national treatment and MFN principles, that permits investment flows to respond more freely to market forces. The United States will work to protect U.S. investment abroad from treatment which is discriminatory or otherwise inconsistent with international law standards. Under international law, no U.S. investment should be expropriated unless the taking is done for a public purpose, is accomplished under due process of law, is non-discriminatory, does not violate previous contractual arrangements, and is accompanied by prompt, adequate, and effective compensation.

In carrying out its international investment policy, in multilateral institutions, the United States will continue to:

- encourage OECD member governments to adhere to, strengthen and extend OECD investment and capital liberalization instruments;
- explore ways of extending the principles embodied in the OECD instruments to non-OECD countries;
- support efforts to increase awareness of the extent and adverse effects of government intervention in order to build a global political consensus to reduce such intervention;
- work toward increased recognition of intellectual property rights;

-2-

- work in the OECD for a "data pledge" which would assure that no new barriers to data flows will be imposed by developed countries; and encourage all countries to join in adopting more open and liberal policies on transborder data flows;
- work to ensure that technology transfers are carried out on a sound commercial basis, subject to national security and foreign policy considerations. [The national interest may also call for policy considerations regarding the investment transfer of leading edge technologies which may have harmful effects on the U.S. economy and security].
- encourage the Multilateral Banks to explore ways to strengthen the private sector role in facilitating financial flows to the developing world;
- support investor access to third party arbitration to settle investment disputes.

In its relations with individual countries, the United States will:

- provide services and assistance to American investors abroad, and offer the full support necessary to ensure that their investments are treated in accordance with standards of international law;
- ensure that the provisions of U.S. Friendship, Commerce and Navigation treaties and bilateral investment treaties and agreements are fully observed;
- seek to conclude bilateral investment treaties and agreements with interested countries;
- explore other appropriate ways to support private direct investment in developing countries;
- reserve the right to take action against the use of performance requirements and similar policies, consistent with international obligations. The United States will also exercise its rights under existing international agreements.

The United States believes that a combination of multi-lateral and bilateral efforts will contribute to a more open global climate for investment and thus enhance the prospects for economic growth in the United States and globally.

Drafted:EB/IFD/OIA:DMMontgomery *etc*
5/5/83:21448

U.S. Government Policy on International Investment

I. Setting

The United States believes that international direct private investment plays a vital and expanding role in the U.S. and world economies. It can act as a catalyst for growth, introduce new technology and management skills, expand employment and improve productivity. Foreign direct investment can be an important source of capital and can stimulate international trade. Both home and host country economies benefit from an open international investment system.

International direct investment can provide particular benefits to developing countries. Foreign investment capital can help to expand the domestic resource base, augmenting locally-generated investment and foreign concessional flows. Foreign direct investment may be of particular value to developing countries in that it contributes to domestic productive capacity without increasing the debt service burden. Further, developing countries may look to foreign direct investment to create new employment opportunities and to provide needed managerial and technical skills that cannot be gained through foreign trade.

Under present circumstances, however, international direct investment is being prevented from making its full contribution to global economic growth. While the current world trade and monetary systems (as embodied in the GATT and the IMF) developed after World War II remain an important foundation for the long-term growth and prosperity of the world economy, there unfortunately exists no comparable system for international direct investment. There has been little collective restraint on widespread and distortive interventions by both developed and developing governments, attempting to control the flow of foreign direct investment and the benefits associated with it. While the effects of intervention are difficult to quantify, the impact can be negative for home, host, and third countries because intervention distorts international investment and trade flows, thereby preventing the most efficient allocation of resources.

Attempts have been made to address this problem but progress has been slow. The inability to arrive at international consensus on these issues has created pressures in many countries, including the U.S., to abandon more traditional economic policies based on market forces and to move toward still greater government intervention.

In light of these developments it is important that there be a clear understanding both at home and abroad of U.S. policies with respect to international direct investment issues and how the United States intends to implement these policies.

II. U.S. Policy Precepts

The United States believes that an open international investment system responding to market forces provides the best and most efficient mechanism to promote global economic development. Government intervention in the international allocation of investment resources can retard economic growth. ILLEGIB

The United States has consistently welcomed foreign direct investment in this country.* Such investment provides substantial benefits to the United States. Therefore, the United States fosters a domestic economic climate which is conducive to investment. We provide foreign investors fair, equitable, and non-discriminatory treatment under our laws and regulations. We maintain only those safeguards which are necessary to protect our security and related interests and which are consistent with our international legal obligations.

The United States believes that U.S. direct investment abroad should also receive fair, equitable and non-discriminatory treatment, consistent with international law standards. The basic tenet for treatment of investment is the national treatment principle: foreign investors should be treated no less favorably than domestic investors in like situations. Exceptions should be limited to those required to protect national security and related interests. In these cases, foreign direct investment should be accorded treatment consistent with the most-favored-nation principle. ILLEGIB

The United States opposes the use of government practices which distort, restrict, or place unreasonable burdens on direct investment. These include such measures as trade-related or other performance requirements (such as local content, minimum export, and local equity requirements), fiscal or financial incentives. Interference with the market mechanism can cause serious distortions in trade and investment flows, encourage the retaliatory use of similar measures by other governments, and precipitate a downward spiral in global investment flows. The United States intends to continue its efforts to reduce or eliminate measures that restrict, distort or place undue burdens on international direct investment flows. ILLEGIB

The United States will continue to work for the reduction or elimination of unreasonable and discriminatory barriers to entry of investment. The United States believes that foreign investors should be able to make the same kinds of investment, under the same conditions, as nationals of the host country. Exceptions should be limited to areas of legitimate national security concern or related interests. Because establishment questions are not adequately covered in existing multilateral instruments relating to investment, the United States will encourage broader exploration, identification and discussion of these issues in the OECD and elsewhere. ILLEGIB

The United States recognizes that international direct investment frequently serves as a vehicle for transfer of technology and can benefit the economic development goals of both home and host countries. Technology transfers should be carried out on a sound commercial basis, subject to national security and foreign policy considerations. [The national interest may also call for policy considerations regarding the investment transfer of leading-edge technologies which may have harmful effects on the U.S. economy and security].

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The United States places high priority on the protection of U.S. investment abroad from discriminatory treatment, or treatment which is inconsistent with international law standards. Under international law, no U.S. investment should be expropriated unless the taking (a) is done for a public purpose; (b) is accomplished under due process of law; (c) is non-discriminatory; (d) does not violate any previous contractual arrangements between the national or company concerned and the government making the expropriation; (e) is accompanied by prompt, adequate and effective compensation.

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III. General U.S. Objectives

The United States accords foreign investors open access to our markets and technology. What we seek is similar access for United States investors abroad. The fundamental objective of our international investment policy is acceptance of the national treatment principle. In those limited sectors where national security or related interests preclude the extension of national treatment, most-favored-nation treatment should apply.

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In addition, the United States seeks to:

- strengthen multilateral and bilateral discipline over government actions which affect investment decisions, such as incentives and performance requirements, particularly when such actions distort international trade and investment flows;
- reduce unreasonable and discriminatory barriers to establishment;
- create, through cooperation among developed and developing nations, an international environment in which direct investment can make a greater contribution to the development process;
- foster a domestic economic climate in the United States which is conducive to investment, ensure that foreign investors receive fair and equitable treatment under our statutes and regulations, and maintain only those safeguards on foreign investment which are necessary to protect our security and related interests and which are consistent with our international legal obligations;

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IV. Multilateral

The United States will:

-- continue to adhere to the OECD Investment Declaration and related Decisions on national treatment, international investment incentives and disincentives, and Guidelines for Multinational Enterprises as adopted in 1976 and reviewed in 1979. We also adhere to the OECD Code of Liberalization of Capital Movements, adopted in 1961 and support its expansion.

-- encourage OECD governments to abide by the OECD investment and capital liberalization instruments, and to strengthen and extend these instruments through broader extension of the principle of national treatment and the right of establishment;

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explore ways of extending the principles embodied in the OECD instruments to non-OECD countries. To increase the effectiveness of these instruments on a global basis, the developing countries, and in particular, the newly industrialized countries need to be brought into any multilateral understanding on investment;

support efforts to increase awareness of the extent and adverse effects that government intervention, e.g., through performance requirements, can have on the U.S. and world economies. This is essential in order to build the global political consensus necessary to reduce the predatory use of such measures and especially to limit the introduction of new measures and the expansion of existing measures. The United States will encourage and actively participate in continued work in multilateral institutions to address these questions.

-- encourage adherence by all countries to the Paris Convention for the Protection of Industrial Property, and enactment of effective industrial property laws, guarantying recognition of patent, copyright, and other industrial property rights. These are essential for the flow of foreign direct investment into both developed and developing countries. The lack of adequate property rights is major disincentive to investment in manufacturing facilities and research and development and to the transfer of technologies. The Paris Convention for Industrial Property Protection is currently undergoing revision under the auspices of the World Intellectual Property Organization. The United States will support continued efforts aimed at improving protection of industrial property rights; fight to maintain current protection levels where they are adequate and to upgrade protection where it is inadequate; and work to ensure that such principles are upheld in negotiations of codes relating

to transfer of technology and transnational corporations which are now underway in the U.N.

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continue to work in the OECD for a "data pledge" which would assure that no new barriers to data flows will be imposed by developed countries; and encourage all countries to join in adopting more open and liberal policies on transborder data flows;

encourage adherence to the Code of Capital Movements and support its expansion;

support the Multilateral Development Banks in their efforts to foster more rapid economic growth in the developing countries. The United States will continue to encourage the Banks to explore ways to develop new programs to strengthen the private sector role in financial flows to the developing world;

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support the investor access to third party arbitration to settle investment disputes, such as the facilities of the World Bank's International Centre for the Settlement of Investment Disputes. The United States believes that governments should effectively support investor access by adherence to the Convention of the Settlement of Investment Disputes between States and Nationals of Other States or the Inter-American Convention on International Commercial Arbitration, and by evidencing their commitment to be bound by third country arbitral awards by adhering to the Convention of the Recognition and Enforcement of Foreign Arbitral Awards.

V. In its bilateral relations, the United States:

- in cases of expropriation or nationalization of American investment abroad, will provide full support for American investors to ensure that standards of international law are honored by host governments;
- will provide appropriate facilitative services to assist American investors overseas and, in particular, will assist them in obtaining information on the host country investment climate, economic objectives, and investment opportunities.

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will work to ensure that the relevant provisions of our Friendship, Commerce and Navigation treaties are fully observed;

-6-

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[redacted] As a means to facilitate and protect American investment, will seek to conclude bilateral investment treaties and agreements with interested countries. The treaties will contain appropriate provisions on, inter alia, treatment of existing and new investment (including national treatment and most-favored-nation treatment); transfers; dispute settlement; use of performance requirements; and compensation in the event of expropriation; ILLEGIB

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will explore, through our bilateral economic assistance programs with developing countries, appropriate ways to increase non-official flows, and will seek to ensure that these programs effectively support private direct investment;

[redacted] reserves the right to take unilateral action against the use of performance requirements and similar policies, consistent with our international obligations. The United States is now exercising and will continue to exercise its rights under existing international arrangements, including the GATT and OECD. ILLEGIB

The United States believes that a combination of multi-lateral and bilateral efforts will contribute to the achievement of a more open global climate for investment and thus enhance the prospects for economic growth in the United States and globally.

Drafted: EB/IFD/OIA: DMMontgomery:tc
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